

ENTERED

June 26, 2023

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

CLARENCE EVANS,	§	CIVIL ACTION NO
Plaintiff,	§	4:22-cv-02508
	§	
	§	
vs.	§	JUDGE CHARLES ESKRIDGE
	§	
	§	
MARK HERMAN,	§	
Defendant.	§	

**ORDER ADOPTING
MEMORANDUM AND RECOMMENDATION**

Plaintiff Clarence Evans brought this action in state court alleging that Defendant Mark Herman, Constable with the Harris County Precinct Four Constable's Office, in his individual and official capacity, violated his First Amendment free speech rights by deleting critical comments from, and restricting his access to, an official government Facebook page. Dkt 1-5 at 4. Defendant timely removed the action. Dkt 1. Plaintiff filed an amended complaint. Dkt 12. Defendant then moved to dismiss the claims against him in his individual capacity on the basis that the claims are barred by qualified immunity. Dkt 16.

Pending is a Memorandum and Recommendation by Magistrate Judge Christina A. Bryan on the motion to dismiss. Dkt 24. She recommends that the motion be denied because Plaintiff has sufficiently alleged that Defendant violated Plaintiff's First Amendment rights by restricting the expression of his viewpoint on the subject Facebook page, and that the right to be free from viewpoint discrimination on an interactive, government-created forum was clearly established at the time of the violation. Dkt 24 at 14-15.

Defendant Mark Herman timely filed objections. Dkt 25.

The district court reviews *de novo* those conclusions of a magistrate judge to which a party has specifically objected. See FRCP 72(b)(3) & 28 USC § 636(b)(1)(C); see also *United States v Wilson*, 864 F2d 1219, 1221 (5th Cir 1989, *per curiam*). The district court may accept any other portions to which there's no objection if satisfied that no clear error appears on the face of the record. See *Guillory v PPG Industries Inc*, 434 F3d 303, 308 (5th Cir 2005), citing *Douglass v United Services Automobile Association*, 79 F3d 1415, 1430 (5th Cir 1996, *en banc*); see also FRCP 72(b) advisory committee note (1983).

Upon *de novo* review and determination, Defendant's objections lack merit. No clear error otherwise appears upon review and consideration of the Memorandum and Recommendation, the record, and the applicable law.

The objections by Defendant Mark Herman to the Memorandum and Recommendation are OVERRULED. Dkt 25.

The Memorandum and Recommendation of the Magistrate Judge is ADOPTED as the Memorandum and Order of this Court. Dkt 24.

The motion to dismiss by Defendant Mark Herman is DENIED. Dkt 16.

SO ORDERED.

Signed on June 26, 2023, at Houston, Texas.

A handwritten signature in black ink, reading "Ch R Eskridge II". The signature is stylized with a large "C" and "E", and the "II" is written as a superscript.

Hon. Charles Eskridge
United States District Judge